
United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Biomass Energy Service

File: B-412898

Date: July 1, 2016

Randy Parker for the protester.

Kelly Tischler, Esq., Defense Logistics Agency, for the agency.

Susan K. McAuliffe, Esq., and Eric Ransom, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's rejection of proposal as technically unacceptable is denied where agency's evaluation was reasonable and consistent with solicitation requirements.

DECISION

Biomass Energy Service, of Tifton, Georgia, protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. SPE600-15-R-0719, issued by the Defense Logistics Agency for bulk petroleum fuel. BioMass alleges that the rejection of its proposal was in error.

We deny the protest.

BACKGROUND

The RFP, issued on October 5, 2015, contemplated the award of multiple 1-year indefinite-delivery, indefinite-quantity contracts for the supply of bulk petroleum fuel, including, as relevant to this protest, JAA (commercial) aviation fuel. Memorandum of Law at 2. The RFP, which provided for award on a lowest-price, technically acceptable basis, set out the following five technical evaluation subfactors: supplies/services; description/specifications/statement of work; inspection/acceptance; deliveries/performance; and biofuel conformance. *Id.* at 3. In order for a proposal to be determined technically acceptable for award, an evaluation rating of "acceptable" was required under each technical evaluation subfactor. RFP at 76. Offerors were instructed to provide proposal information in sufficient detail to evaluate compliance with solicitation requirements. *Id.* at 70.

Under the inspection/acceptance subfactor, offerors were required to demonstrate their understanding of the RFP's contractor inspection responsibilities and quality assurance requirements set out in RFP sections E-0001 E1 and E-0002 E1.21. As relevant, section E-0001 E1 required offerors to have a written quality control plan setting out procedures for blending additives, sampling, testing, calibration, storage and handling, loading and shipping, records and reports, and corrective action of product deficiencies. *Id.* at 21. Section E-0002 E1.21 required that the offeror's quality control plan also address certain minimum elements, including planned procedures for full spectrum testing and injecting additives, compliance with specifications, and records retention. *Id.* at 31. To demonstrate the required understanding of these quality assurance requirements, offerors were required to include in their initial proposals a dated coversheet and table of contents of an existing quality control plan no more than 24 months old, or an outline of a proposed quality control plan describing the offeror's current inspection system and quality assurance procedures, with reference to the requirements of E-0001 E1 and E-0002 E1.21. RFP Offer Submission Package at 13.

The protester failed to include the required quality assurance information in its initial proposal. The agency then requested this information from BioMass numerous times during negotiations. Shortly before the closing date for final revised proposals, BioMass provided a brief outline of its proposed quality assurance procedures. The protester also informed the agency that its proposed fuel terminal's quality control plan would be used for the contract, and stated that the plan was acceptable since the agency had used that same facility for other fuel requirements. BioMass did not provide the agency with any written documentation of the terms of that facility's quality control plan. Rather, the firm provided only a fact sheet concerning its proposed fuel terminal's overall capabilities, and identification of its proposed fuel additives and testing lab, without information on required quality assurance procedures.¹

The agency reviewed the protester's brief outline and concluded that it contained only general statements that were insufficient to demonstrate an understanding of the RFP's inspection and quality assurance requirements.² The agency also considered information submitted by the protester regarding its proposed fuel terminal, additives, and testing lab, but concluded that the information failed to provide sufficient details related to, or demonstrate an understanding of, all of the inspection and quality assurance requirements set forth in RFP sections E-0001 E1 and E-0002 E1.21.

¹ Since a protective order was not issued in connection with this protest, our discussion, including reference to the proposed fuel terminal, is necessarily general.

² BioMass does not challenge the agency's determination of the inadequacy of its quality control plan outline.

A pre-award survey was conducted at the protester's proposed fuel terminal, during which, the agency reports, its representative noted that the facility's quality control process appeared to be detailed and consistent with local quality control procedures. The agency representative did not, however, make a determination that the facility's process complied with the requirements of the RFP, and noted that the protester had not provided a copy of the proposed quality control plan, as required. Legal Memorandum at 6; Pre-Award Survey at 4, 9 and 10. Moreover, the agency representative noted that the facility's operations manager stated that BioMass did not have a written agreement to use the facility and that the facility had no storage availability to meet the performance requirements of the contract. Pre-Award Survey at 4. Accordingly, the pre-award survey recommended "No Award" to the protester. Id.

Based on these findings, the agency concluded that the protester's proposal was technically unacceptable under the inspection/acceptance technical subfactor, where the firm failed to provide required documentation to demonstrate an understanding of the inspection and quality assurance requirements of the RFP. The agency therefore rejected the proposal as technically unacceptable overall. This protest followed.

DISCUSSION

In reviewing a protest against the propriety of an evaluation, it is not our role to independently evaluate proposals and substitute our judgment for that of the contracting activity. Barents Group, L.L.C., B-276082, B-276082.2, May 9, 1997, 97-1 CPD ¶ 164 at 6. Rather, we will review an evaluation to ensure that it was reasonable and consistent with the evaluation criteria in the solicitation and applicable procurement statutes and regulations; a protester's disagreement with the evaluation, without more, does not show it lacked a reasonable basis. Id.

BioMass contends that the agency's rejection of its proposal was unreasonable since an agency representative had noted at the pre-award survey that the firm's proposed fuel terminal's quality control plan appeared to be detailed, and the agency apparently had previously accepted that facility's quality control plan since it uses the same facility to meet other needs. BioMass also asserts that the agency could have requested a copy of the fuel terminal's quality control plan directly from the fuel terminal, but that the agency failed to do so.³ We disagree.

³ BioMass also contends that the RFP did not require it to provide its actual quality control plan until the time of contract performance. We find the protester's contention irrelevant to the issue of whether or not the agency reasonably determined that the firm failed to meet the RFP's clear requirement to demonstrate in its proposal an understanding of the RFP's quality assurance requirements. To (continued...)

An offeror is responsible for demonstrating affirmatively the merits of its proposal and risks rejection if it fails to do so. See John Blood, B-402133, Jan. 15, 2010, 2010 CPD ¶ 30 at 3-4. No matter how competent an offeror may be, the technical evaluation must be based on information included in the firm's proposal. See Watson Indus., Inc., B-238309, Apr. 5, 1990, 90-1 CPD ¶ 371 at 3-4. Here, the RFP specifically required that offerors demonstrate their understanding of the requirements through the submission of mandatory documentation. The protester has not shown that its proposal contained the required documentation to demonstrate its understanding of the contractor inspection and quality assurance requirements set forth in RFP sections E-0001 E1 and E-0002 E1.21, and thus, we have no basis to question the agency's rejection of its proposal as technically unacceptable under the inspection/acceptance subfactor.⁴ See National Shower Express, Inc.; Rickaby Fire Support, B-293970, B-293970.2, July 15, 2004, 2004 CPD ¶ 140 at 4-5 (offeror is responsible for including sufficient information to establish compliance with solicitation requirements and blanket statements of compliance are insufficient to meet this obligation).

The protest is denied.

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General Counsel

(...continued)

the extent the protest challenges the terms of the RFP, its protest is untimely.
4 C.F.R. § 21.2(a)(1).

⁴ We also find that the protester's asserted reliance on its proposed fuel terminal's quality control plan appears to be undermined by the fact that, during the pre-award survey, the proposed fuel terminal's operations manager informed the agency that not only did the facility not have a written agreement with BioMass, but that there was no fuel storage space for the firm to use there. While the protester contends that it had a verbal agreement with the fuel terminal, the firm has provided no support for the contention; nor has the firm provided information that refutes the report that storage space is currently unavailable at the proposed facility for the performance of the RFP's requirements.